IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.777 OF 2007

1. Wire & Wireless India Limited,
Maldhu Industrial Estate,
4th Floor, P.B. Marg, Worli,
Mumbai - 18.

2. Mr.Subhash Chandra,
Chairman of Petitioner No.1,
Hindu Adult, Indian Inhabitant
Office at 135,
Continental Building,
Mumbai 400 018.

3. Mr.Jagjit Singh Kohli,
Managing Director of
Petitioner No.1, Hindu Adult,
Indian Inhabitant,
Office at Madhu Industrial
Estate, 4th Floor, P.B.Marg,
Worli, Mumbai - 18.

4. Major General (Retd.)
Mr.C.L. Anand,
Chief Operating Officer,
Hindu Adult, Indian Inhabitant
Office at Madhu Industrial
Estate, 4th Floor,
P.B. Marg, Worli,
Mumbai - 18. .. Petitioners

Versus

1. The State of Maharashtra,
Through Public Prosecutor,
Bombay High Court, 2nd Floor,
High Court Annexe Building,
Mumbai.

2. Senior Police Inspector,
Social Service Branch,
Crime Branch, Crawford Market,
Mumbai 400 001. .. Respondents

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S/Shri Harish Salve, Senior Counsel with Vijay A.Thorat, Senior Counsel, with Prakash Shah and Ranjit Shetty, Advocates, i/by M/s.PDS Legal for the petitioners.

Shri S.R.Borulkar, Public Prosecutor, for the State.

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CORAM : R.M.S.KHANDEPARKAR &
SMT.V.K.TAHILRAMANI, JJ

DATED : 4TH SEPTEMBER, 2007

ORAL JUDGMENT : (PER R.M.S.KHANDEPARKAR, J)

1. Heard. Rule. By consent, the rule is made returnable forthwith. Shri Borulkar, the learned Public Prosecutor for the State waives service.

2. By the present petition, the petitioners are seeking to quash the F.I.R. bearing No.0 of 2007 dated 30th March, 2007 registered at Social Service Branch, CB CID, Bombay, under Section 4A read with Sections 16 and 17 of the Cable Television Networks (Regulations) Act, 1995, hereinafter called as "the said Act".

3. Few facts relevant for the decision are that the petitioner No.1 is the Company engaged in distribution of Cable TV Signal through local cable

operators in the vicinity of Mumbai and other adjoining areas in the State of Maharashtra, consequent to the licence granted to the petitioners by the Ministry of Information & Broadcasting, Government of India, on 30th September, 2006 under the said Act. The petitioner No.2 is a Non-executive Chairman of the said Company. The petitioner No.3 is the Managing Director of the petitioner No.1 Company. The petitioner No.4 is the Chief Operating Officer who is stated to have direct responsibility to report to the petitioner No.3 and to take a direction to further convey the same to the heads of department who are responsible for day to day affairs of the said company.

4. The complainant, the respondent No.2 herein, visited the petitioner No.1's office at Madhu Industrial Estate, 4th Floor, P.B. Marg, Worli, Mumbai - 400 018, on 21st February, 2007 and found that pay channels could be seen without smart cards and that the SMS system was not updated and all channels could be seen without encryptions. Having so found, the impugned F.I.R. came to be recorded. The relevant portion regarding the allegations against the petitioners in the impugned F.I.R. read thus:-

"On 21.2.2007 I myself and staff visited WWIL Company situated at Madhu Industrial Estate, 4th Floor, P.B.Marg, Worli, Mumbai and found pay channels can be seen without smart card and SMS system is not updated and all channels can be seen without encryptions.

On 13.03.07 P.I.Gaikwad and P.I. Gadade and staff visited WWIL Company and found that pay channels can be seen without encryption.

As mentioned above WWIL Company and its office bearer namely 1. Shri Subhashchandra Goyal - Owner of WWIL 2. Shri Jagjit Singh Kohli - Chief Executive Officer 3. General Anand - Chief Operational Officer have contravened the provisions of Section 4(A) of Cable Television Network (Regulation) Act, 1995. And therefore, I lodge my complaint against the above-mentioned persons of Company and WWIL Company."

5. Being aggrieved, the present petition has been filed challenging the same on various grounds including the ground that the impugned FIR on the face of it does not disclose any cognizable offence under

Section 4A of the said Act and hence there is no case for investigation by the police either under the said Act or any other law.

6. According to the petitioners, the allegations in the F.I.R. ex facie disclose that the petitioners have not violated the provisions of law comprised under Section 4A of the said Act in as much as that the FIR nowhere alleges any act on the part of the petitioners whereby the subscribers are allowed to view all the pay channels even without the use of smart card. It is their further case that the allegations revealed in the impugned F.I.R. do not constitute any offence against the petitioners even if the same are taken on its face value.

7. Section 4-A(1) of the said Act of which the contravention is alleged, provides that where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, make it obligatory for every cable operator to transmit or re-transmit programme of any pay channel through an addressable system with effect from such date as may be specified in the notification and different dates may be specified for different States, cities, towns

or areas, as the case may be, provided that the subscriber shall use an addressable system to be attached to his receiver set for receiving programmes transmitted on pay channel. The expression "addressable system" under the said provision of law has been described in the explanation clause under the said Section and it means an electronic device or more than one electronic devices put in an integrated system through which signals of cable television network can be sent in encrypted or unencrypted form, which can be decoded by the device or devices at the premises of the subscriber within the limits of authorisation made, on the choice and request of such subscriber, by the cable operator to the subscriber. The term "encrypted" has also been described in the said explanation in clause (d) to mean the changing of such signal in a systematic way so that the signal would be unintelligible without a suitable receiving equipment and the expression "unencrypted" shall be construed accordingly. The term "pay channel" has been defined in the explanation clause (f) to mean a channel the reception of which by the subscriber would require the use of an addressable system to be attached to his receiver set. The term "channel" has been described under clause (c) of the explanation to mean a set of frequencies used for transmission of a

programme. The expression "subscriber" is defined in Section 2(i) to mean a person who receives the signals of cable television network at a place indicated by him to the cable operator, without further transmitting it to any other person.

8. It is the case of the petitioners that for delivering pay channels in encrypted mode to the subscribers, an encryption system along with the Subscribers Management System is required to be installed. At the control room of a Multi System Operator, for short "M.S.O.", the signals of various pay channels are downlinked. These pay channels carry different encryptions which are required to be decrypted through decoders provided by the broadcasters. After downlinking the signals of various pay channels, the M.S.O. uses different decoders supplied by the broadcasters to decode the signals. Once the signals are decoded, these signals are combined in one feed which is known as "clean feed". The clean feed does not contain any encryption. The combined clean feed is then assigned a common encryption and transmitted to cable operators and ultimately to the subscribers' premises where it is decrypted by Set Top Box, for short "S.T.B", and the signals of pay channels can be viewed on

television sets of the subscribers.

9. It is the contention on behalf of the petitioners that what was seen by the complainant and his team in the control room of the petitioner company was the clean feed which is the intermediary stage between the removal of encryption of different pay channels by the petitioner company and the assignment of a common encryption for such feed through encryption system. It is their contention that such a clean feed is required to monitor and check the quality of signals after combining the signals of different pay channels in a single feed so that after assigning the encryption when the signals are decoded/decrypted at the subscribers' premises, the subscribers should get a good quality picture without any distortion. It is their further case that the pay channels retransmitted by the petitioner company are receivable by the subscribers only through Set Top Boxes and it is not possible for any subscriber to view the signals of pay channels without deployment of STB, and therefore there is no violation whatsoever of the provision of law comprised under Section 4A of the said Act.

10. On the other hand, it is the case of the

respondents that in Digital Term Around Set Up, unlike the earlier Analogue Set Up System, it is the choice of subscriber which the Multi System Operator has to cater. It is further their case that in Digital Term Around Set Up, signals from multiple channels are routed through Remultiplexes for a subscriber. After receipt of the signals in Remultiplexes, the same are routed through Bit Rate Shaper which conditions the audio visual quality of signals and thereafter forwarded to the scrambler which acts as C.A.S.. Further the signals travel from Digital Modulator where the signals are modulated and forwarded to Radio Frequency Combiner where all channels are combined and forwarded through signal wire of cable network.

11. It is the contention of the respondents that when signals are routed through Radio Frequency Combiner, the viewer cannot view all the channels on the television set. While disputing the contention of the petitioners that the programmes viewed in their office was a clean feed, it is sought to be argued that though in terms of notification of TRAI, on removal of smart card from Set Top Box, all the channels should go off air, that was not the situation in the control room of the petitioners, and it was found that inspite of removal of smart card from the

Set Top Box, all pay channels were visible on television set in the control room and that therefore it was clear that the signals of pay channels were not encrypted and the same were forwarded to the subscribers. And that, therefore, it is the contention of the respondents that the programmes were transmitted to the subscribers in unencrypted form.

12. Bare perusal of the impugned FIR nowhere discloses any allegation or accusation of transmission of programmes in unencrypted form to the subscribers. In fact, the FIR nowhere discloses any verification of the programme on any T.V. set at the premises of the subscribers. Considering the same, without going into the various other contentions sought to be canvassed in the matter, suffice to observe that the FIR which seeks to accuse the petitioners of commission of offence under Section 4A read with Sections 16 and 17 of the said Act on the basis that all the pay channels were available on T.V. Set at the control room of the petitioners, without the use of smart card in the Set Top Boxes, falls short of disclosing any cognizable offence to have been committed by the petitioners either under Section 4A or under any other provision of the said Act. Merely because clean feed was available at the control room of the petitioner

company, without ascertaining whether all the pay channels were made available at the subscribers' premises without use of the smart card in the said Set Top Box or not, it obviously discloses no cognisable offence by the petitioner. It is settled law that an FIR in terms of Section 154 of the Code of Criminal Procedure can be registered only when a cognizable offence is disclosed. Merely because the programmes were in the course of transmission, in the absence of any such certificate from a subscriber or without ascertaining whether they were available in contravention of the provision of Section 4A at the subscribers' T.V. Set, the respondents were not justified in recording FIR about alleged violation of the provisions of law comprised under Section 4A of the said Act by the petitioners. Viewed from this angle, therefore, the impugned FIR cannot be sustained and is liable to be quashed.

13. It is however made clear that this shall not preclude the respondents from taking appropriate steps to ascertain whether the petitioners are complying with the provisions of the said Act or not, and to initiate proceedings if found violating the provisions of law.

14. On the limited ground stated above the petition succeeds and therefore, the impugned FIR is hereby quashed and set aside. The rule is made absolute accordingly in above terms. No order as to costs.

(R.M.S.KHANDEPARKAR, J)

(SMT.V.K.TAHILRAMANI, J)